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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,260	06/19/2001	Alan Brash	06027.0002U2	3583

23859 7590 05/05/2005  
NEEDLE & ROSENBERG, P.C.  
SUITE 1000  
999 PEACHTREE STREET  
ATLANTA, GA 30309-3915

EXAMINER

NASHED, NASHAAT T

ART UNIT	PAPER NUMBER
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1652

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/884,260

Applicant(s)

BRASH ET AL.

Examiner

Nashaat T. Nashed, Ph. D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20-23, 25-28, 30-35, 37-40, 42 and 43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 20-23, 26-28, 31-35, 38-40, and 43 is/are rejected.
- 7) ☒ Claim(s) 25, 30, 37 and 42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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The finality of the previous Office action mailed January 26, 2005 has been withdrawn in order to introduce new ground of rejection. The after-final amendment filed March 28, 2005 has been entered. Accordingly, claims 20, 21, 25, 30, 32, 33, 37, and 42 have been amended, and claims 24, 36, and 41 have been canceled.

Claims 20-23, 25-29, 31-35, 38-40, 42, and 43 are pending and under consideration.

The indicated allowability of the subject matter of canceled claims 24, 29, 36, and 41 has been withdrawn. Now, amended claims 20, 21, 32, and 33 contain the subject matter of said canceled claims and are subjected to the new rejections bellow.

New Rejection

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 20-23, 26-28, 31-35, 38-40, and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The clause "wherein the lyase has an amino acid sequence present in a protein isolated from *Cucumis melo*" in claims 20, 21, 32, and 33 renders the claims indefinite and confusing. The phrase has apparently at least two meanings. The first meaning is "wherein the lyase consists of an amino acid sequence present in a protein isolated from *Cucumis melo*". The second meaning, however, is "wherein the lyase comprising any amino acid sequence which includes any dipeptide or tripeptide which can be found in any protein isolated from *Cucumis melo*". For examination purposes only, the examiner has adopted the second meaning to the clause. Claims 22, 23, 26-28, 31, 34, 35, 38-40, and 43 are included in this rejection because they are dependent on a rejected claim and do not cure its deficiencies.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 20-23, 27, 28, 32-35, 39, and 40 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed

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invention for the reasons set forth in the prior Office actions mailed August 6, 2004 and January 26, 2005. Applicants have not provided new argument regarding this rejection of record because they thought the claims would be allowable.

Claims 20-23, 26-28, 31-35, 38-40, and 43 are rejected under 35 U.S.C. 112, first paragraph, for lack of enablement for the reasons set forth in the prior Office actions, mailed August 6, 2004 and January 26, 2005. Applicants have not provided new argument regarding this rejection of record because they thought the claims would be allowable.

Allowable subject matter:

Limiting independent claims 21, 22, 32, and 33 to a *Cucumis melo* lyase would obviate all rejections.

Claims 25, 30, 37, and 42 are objected to for containing non-elected subject matter of SEQ ID NO: 15, and as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nashaat T. Nashed, Ph. D. whose telephone number is 571-272-0934. The examiner can normally be reached on MTTF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura Achutamurthy can be reached on 571-272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nashaat T. Nashed, Ph. D.  
Primary Examiner  
Art Unit 1652